

Appl. No. 09/529,575
Docket No. 7042RL+
Response dated December 20, 2007
Reply to Office Action mailed on September 26, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 31, 32, 36, 42-44, 46, 48, and 52-53 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Roe in view of Caldwell

Claims 31, 32, 36, 42-44, 46, 48, and 52-53 have been rejected under 35 USC §103(a) as being unpatentable over Roe (USPN 5,607,760) in view of Caldwell (USPN 5,874,164).

The Office Action asserted that Roe discloses all aspects of the claimed invention with the exception of the protease inhibitor being pentamidine and present in the amount of 0.0001-30% by weight. The Office Action also asserts that Caldwell teaches the application of a protease inhibitor to the topsheet of an absorbent article. The Office Action concludes that it would have been obvious to one of ordinary skill in the art at the time of invention to provide the lotion of Roe with pentamidine, as taught by Caldwell, to yield the predictable result of providing the lotion with antimicrobial activity.

Under MPEP 2142, the Office bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See, *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). If the Office does not prove a *prima facie* of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See in re *Oetiker*, 977 F.2d 1443.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must meet three basic criteria. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim

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limitations. *Id.* Applicants respectfully traverse this rejection because the Office Action fails to establish a *prima facie* case of obviousness.

Roe teaches a diaper containing a liquid pervious topsheet coated with a lotion composition. The lotion composition can optionally comprise disinfectant antibacterial actives, i.e. actives that can destroy or stop the growth of living cells. Applicants find no teaching or suggestion in Roe of any enzyme inhibitors. In contrast, independent Claim 31 requires a topsheet that comprises a protease inhibitor, i.e. a compound that inhibits biosynthesis or actions of enzymes. According to the present specification, Applicants have discovered that protease inhibitor-treated topsheets provides a proactive defense against fecal proteases for the reduction or prevention of diaper dermatitis due to proteolytic enzymes. (See p. 6, lines 8-22).

Moreover, the deficiencies of Roe are not resolved by Caldwell. While Caldwell teaches barrier webs comprising pentamidine, Applicants find no teaching by Caldwell of a topsheet of a diaper containing protease inhibitors as recited in Claim 31. Specifically, Caldwell teaches barrier webs that have certain desirable physical qualities such as water resistance, increased durability and improved barrier qualities. Caldwell also teaches that its barrier webs are impermeable to liquids such as water and body fluids. (Col. 7, lines 13-19). Contrary to the Office's assertions, Caldwell does not teach or suggest using the barrier webs as a topsheet for an absorbent article. Rather, a topsheet for an absorbent article by definition is the antithesis of the barrier web of Caldwell, i.e. a topsheet is liquid pervious, permitting liquids (e.g., menses and/or urine) to readily penetrate through its thickness. (See present specification p. 13, lines 4-5). Since the barrier web of Caldwell can't perform the function of a topsheet of a diaper, one skilled in the art would not use the barrier web of Caldwell as a topsheet for a diaper. In fact, due to the physical qualities of the barrier web of Caldwell, one skilled in the art would not have been motivated to look to Caldwell for teachings related to improving topsheets for use in diapers.

Additionally, due to the physical qualities of the barrier web of Caldwell, the barrier web would not come into contact with a wearer's skin and therefore would not be capable of delivering from about 0.0001% to about 30%, by weight, of a protease

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inhibitor to at least a portion of the skin of a wearer of a disposable wearable article as required by Claim 31.

References relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of independent Claim 31, the Office Action has not established a *prima facie* case of obviousness and has not placed the presently claimed disposable wearable article in the possession of the public. Since Claims 32, 36, 42-44, 46, 48, and 52-53 depend directly or indirectly from Claim 31, the cited combination also fails to teach all of their claim limitations. Therefore, Applicants assert that Claims 32, 36, 42-44, 46, 48, and 52-53 are nonobvious over the cited combination and are in condition for allowance.

Conclusion

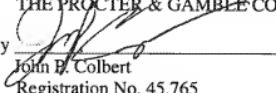
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 31, 32, 36, 42-44, 46, 48, and 52-53 is respectfully requested.

Respectfully submitted,

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